101ST CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
101-431

THE SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION ACT

MARCH 27, 1990.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. DE LA GARZA, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H.R. 2209]

[Including cost estimate of the Congressional Budget Office]

The Committee on Agriculture, to whom was referred the bill (H.R. 2209) to enable producers of soybeans to develop, finance, and carry out a nationally coordinated program for soybean promotion, research, and consumer information, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act my be cited as the "Soybean Promotion, Research, and Consumer Information Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. Findings and declaration of policy.
Sec. 3. Definitions.
Sec. 4. Issuance and amendments of orders.
Sec. 5. Required terms in orders.
Sec. 6. Referenda.
Sec. 7. Petition and review.
Sec. 8. Enforcement.
Sec. 9. Investigations; power to subpoena; aid of courts.
Sec. 10. Administrative provisions.
Sec. 11. Regulations.
Sec. 12. Authorization.

SEC. 2. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS.—Congress finds that—

(1) Soybeans are an important source of nutritious foods that are a valuable part of the human diet and are an important feedstuff for the livestock industry;

(2) the production of soybeans plays a significant role in the economy of the United States in that soybeans are produced by thousands of soybeans produc-

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ers, processed by numerous processing entities, and soybeans and soybean products produced in the United States are consumed by people and livestock throughout the United States and foreign countries;

(3) soybeans and soybean products should be readily available and marketed efficiently to ensure that consumers have an adequate supply of soybean products at a reasonable price;

(4) the maintenance and expansion of existing markets and development of new markets for soybeans and soybeans products are vital to the welfare of soybean producers and processors and those concerned with marketing soybeans and soybean products, as well as to the general economy of the United States, and are necessary to ensure the ready availability and efficient marketing of soybeans and soybean products;

(5) there exist established State and national organizations conducting soybean promotion, research, and consumer education programs that are valuable to the efforts of promoting the consumption of soybeans and soybean products;

(6) the cooperative development, financing, and implementation of a coordinated national program of soybean promotion, research, consumer information, and industry information are necessary to maintain and expand existing markets and develop new markets for soybeans and soybean products; and

(7) soybeans and soybean products move in interstate and foreign commerce, and soybeans and soybean products that do not move in such channels of commerce directly burden or affect interstate commerce in soybeans and soybean products.

(b) POLICY.—Congress declares that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this Act, of an orderly procedure for developing, financing through assessments on domestically-produced soybeans, and implementing a program of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace, to maintain and expand existing domestic and foreign markets and uses for soybeans and soybean products, and to develop new markets and uses for soybeans and soybean products.

(c) CONSTRUCTION.—Nothing in this Act may be construed to provide for the control of production or otherwise limit the right of individual producers to produce soybeans.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) The term "Board" means the United Soybeans Board established under section 5(b) of this Act.

(2) The term "commerce" includes interstate, foreign, and intrastate commerce.

(3) The term "consumer information" means information that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of soybeans or soybean products.

(4) The term "Department" means the Department of Agriculture.

(5) The term "first purchaser" means—

(A) except as provided in subparagraph (B), any person buying or otherwise acquiring from a producer soybeans produced by such producer, or

(B) the Commodity Credit Corporation, in any case in which soybeans are pledged as collateral for a loan issued under any price support loan program administered by the Commodity Credit Corporation.

(6) The term "industry information" means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the soybean industry, and activities to enhance the image of the soybean industry.

(7) The term "marketing" means the sale or other disposition of soybeans or soybean products in any channel of commerce.

(8) The term "net market price" means—

(a) except as provided in subparagraph (B), the sales price or other value received by a producer for soybeans after adjustments for any premium or discount based on grading or quality factors, as determined by the Secretary, or

(B) for soybeans pledged as collateral for a loan issued under any price support loan program administered by the Commodity Credit Corporation, the principal amount of the loan.

(9) The term "order" means an order issued under section 4.

(10) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

(11) The term "producer" means any person engaged in the growing of soybeans in the United States who owns, or who shares the ownership and risk of loss of, such soybeans.

(12) The term "promotion" means any action, including paid advertising, technical assistance, and trade servicing activities, to enhance the image or desirability of soybeans or soybean products in domestic and foreign markets, and any activity designed to communicate to consumers, importers, processors, wholesalers, retailers, government officials, or others information relating to the positive attributes of soybeans or soybean products or the benefits of importation, use, or distribution of soybeans and soybean products.

(13) The term "qualified State soybean board" means a State soybean promotion entity that is authorized by State law. If no such entity exists in a State, the term "qualified State soybean board" means a soybean producer-governed entity—

(A) that is organized and operating within a State,

(B) that receives voluntary contributions and conducts soybean promotion, research, consumer information, or industry information programs, and

(C) that meets criteria established by the Board relating to the qualifications of such entity to perform duties under the order, as determined by the Board, and is recognized by the Board as the soybean promotion and research entity within the State.

(14) The term "research" means any type of study to advance the image, desirability, marketability, production product development, quality, or functional or nutritional value of soybeans or soybean products, including any research activity designed to identify and analyze barriers to export sales of soybeans and soybean products.

(15) The term "Secretary" means the Secretary of Agriculture.

(16) The term "soybean products" means products produced in whole or in part from soybeans or soybean by-products.

(17) The term "soybeans" means all varieties of Glycine max or Glycine soya.

(18) The terms "State" and "United States" consist of the fifty States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

SEC. 4. ISSUANCE AND AMENDMENT OF ORDERS.

(a) IN GENERAL.—To effectuate the declared policy of section 2(b) of this Act, the Secretary, subject to the procedures provided in subsection (b) shall issue orders under this Act applicable to producers and first purchasers of soybeans. Any such order shall be national in scope, and not more than one order shall be in effect under this Act at any one time.

(b) PROCEDURE.—(1) The Secretary may propose the issuance of an order under this Act, or an association of soybean producers or any other person that would be affected by an order issued pursuant to this Act may request the issuance of, and submit a proposal for, such an order.

(2) Not later than 30 days after the receipt of a request and proposal for an order pursuant to paragraph (1), or whenever the Secretary determines to propose an order, the Secretary shall publish a proposed order and give due notice and opportunity for public comment on the proposed order.

(3) After notice and opportunity for public comment are given as provided in paragraph (2), the Secretary shall issue an order, taking into consideration the comments received and including in the order provisions necessary to ensure that the order is in conformity with the requirements under this Act. Such order shall be issued and become effective not later than 180 days following publication of the proposed order.

(c) AMENDMENTS.—The Secretary, from time to time, may amend any order issued under this section. Except as otherwise provided in sections 5(b)(2)(F) and 5(d)(1), no amendment to an order shall be effective until approved by a referendum of soybean producers and the provisions of this Act applicable to orders shall be applicable to amendments to orders.

SEC. 5. REQUIRED TERMS IN ORDERS.

(a) IN GENERAL.—Any order issued under this Act shall contain the terms and conditions specified in this section.

(b) ESTABLISHMENT AND MEMBERSHIP OF THE UNITED SOYBEAN BOARD.—(1) The order shall provide for the establishment of, and appointment of members to, a

United Soybean Board to administer the order. Members of the Board shall be soybean producers appointed by the Secretary, on a geographic basis, form State or combined units, as provided in this subsection. The cumulative number of seats on the Board shall be the total number of seats to which all the units are entitled.

(2) The Secretary shall establish State units and combined units and seats on the Board for such units, as follows:

(A) Except as provided in subparagraph (B), each State shall be considered as a unit.

(B) A State in which average annual soybean production is less than 3 million bushels shall be grouped with other States into a combined unit. To the extent practicable, each State with average annual soybean production of less than 3 million bushels shall be grouped with other States with average annual soybean production of less than 3 million bushels into a combined unit, in a manner prescribed in the order, and each combined unit shall consist of geographically contiguous States. Each combined unit shall have an average annual production of soybeans of at least 3 million bushels.

(C) Subject to subparagraph (F), each unit, as established under subparagraph (A) or (B)—

(i) if its average annual soybean production is less than 15 million bushels, shall be entitled to one seat on the Board;

(ii) if its average annual soybean production is 15 million bushels or more but less than 70 million bushels, shall be entitled to 2 seats on the Board;

(iii) if its average annual soybean production is 70 million bushels or more but less than 200 million bushels, shall be entitled to 3 seats on the Board; and

(iv) if its average annual soybean production is 200 million bushels or more, shall be entitled to 4 seats on the Board.

(D) At the end of each 3 year period beginning with the 3 year period starting on the effective date of the order, the Secretary, if necessary, shall adjust any unit to conform with subparagraphs (A) and (B) and any modifications pursuant to paragraph (F). If the Secretary makes such an adjustment, the Secretary shall re-establish the seats on the board to conform with subparagraph (C) and any modifications pursuant to paragraph (F).

(E) For purposes of subparagraphs (A), (B), (C), and (D), the Secretary shall determine average annual soybean production applicable to a crop year by using the average of the 5 previous crops of soybeans, excluding the crop in which production was the highest and the crop in which production was the lowest.

(F) At the end of each 3 year period beginning with the 3 year period starting on the effective date of the order, the Board may recommend to the Secretary, to the extent it determines appropriate, changes in the levels of production used in subparagraphs (A), (B), and (C) to determine per-unit representation on the Board. The Secretary may amend the order to make such changes in levels of production used to determine per-unit representation. Any such amendment to the order shall not be subject to a referendum of producers. A unit may not, as a result of any modification under this subparagraph, lose Board seats to which it is entitled at the time the order is initially issued unless its average annual production, as determined under subparagraph (E), declines below the levels required for representation, as specified in subparagraphs (A), (B), and (C).

(3)(A) The Secretary shall appoint soybean producers to seats established under paragraph (2) from nominations submitted by each unit. Each unit shall submit to the Secretary at least 2 nominations for each appointment to the Board to which such unit is entitled.

(B)(i) The Secretary shall solicit nominations for each seat on the initially-established Board to which a State unit is entitled from the State soybean board in the State that submits satisfactory evidence to the Secretary that such board meets the criteria of section 3(13), other than section 3(13)(C), of this Act. If no such organization exists in the unit, the Secretary shall solicit nominations for appointments in such manner as the Secretary determines appropriate.

(ii) The Secretary shall solicit nominations for each seat on the initially-established Board to which a combined unit is entitled in such manner as the Secretary determines appropriate, taking into consideration the recommendations of any State soybean board operating in the unit that submits satisfactory evidence to the Secretary that such board meets the criteria of section 3(13), other than section 3(13)(C), of this Act.

(C)(i) The Secretary shall solicit nominations for each subsequent appointment to a seat on the Board to which a State unit is entitled from the qualified State soy-

bean board in the unit. If no such organization exists in the unit, the Secretary shall solicit nominations for such appointment in such manner as the Secretary determines appropriate.

(ii) The Secretary shall solicit nominations for each subsequent appointment to a seat on the Board to which a combined unit is entitled in such manner as the Secretary determines appropriate, taking into consideration the recommendations of any qualified State soybean board operating in the unit.

(4) The Secretary may reject any nomination submitted by a unit. If there are insufficient nominations from which to appoint members to the Board as a result of the Secretary rejecting the nominations submitted by a unit, the unit shall submit additional nominations, as provided in paragraph (3).

(5) The Secretary shall ensure, to the extent practicable, that at least 5 of the members appointed to the Board are members in good standing, and were members for at least 3 years prior to appointment to the Board, of a national general farm organization. Each of the 5 members shall be a member of a different national general farm organization.

(6) Each appointment to the Board shall be for a term of 3 years, except that appointments to the initially-established Board shall be proportionately for 1 year, 2 year, and 3 year terms. No person may serve without compensation, but shall be reimbursed by the Board for their reasonable expenses incurred in performing their duties as members of the Board.

(7)(A) Notwithstanding the foregoing provisions of this subsection, the Secretary, under procedures established by the Secretary, may appoint to the initially-established Board up to 3 temporary members to serve in addition to the members appointed as otherwise provided in this subsection, as the Secretary determines appropriate for transition purposes under the criteria set out in subparagraph (B). Each such temporary member shall be appointed for a single term not to exceed 3 years.

(B) The Secretary, in making any temporary appointments to the initially-established Board, shall ensure, to the extent practicable, that each State with a State soybean board that, prior to the enactment of this Act, was contributing State soybean promotion and research assessment funds to national soybean promotion and research efforts has representation on the initially-established Board that reflects the relative contributions of such State to the national soybean promotion and research effort.

(8) The order shall provide for at least one meeting of the Board annually and specify the circumstances in which additional special meetings of the Board may be held.

(c) POWERS AND DUTIES OF THE BOARD.—The order shall define the powers and duties of the Board and shall include the following powers or duties:

(1) to administer the order in accordance with its terms and provisions;

(2) to make regulations to effectuate the terms and provisions of the order;

(3) to elect members of the Board to serve on committees;

(4) to submit budgets to the Secretary for the Secretary's approval or disapproval;

(5) to contract with appropriate persons to implement plans or projects;

(6) to contract with qualified State soybean boards to implement programs in their States;

(7) to receive, investigate, and report to the Secretary complaints of violations of the order;

(8) to provide the Secretary with prior notice of meetings of the Board to allow the Secretary, or a designated representative, to attend such meetings;

(9) to recommend to the Secretary amendments to the order;

(10) to provide at least annually a report to producers accounting for funds and describing programs implemented and make such report available to the public upon request; and

(11) to ensure, in carrying out the order, that the development of the budget and activities conducted under the order do not cause a duplication of efforts of, or ineffective use of resources under, any other soybean promotion, research, consumer information, or industry information program on the State or national level.

(d) BOARD VOTING PROCEDURES.—(1) The order shall establish procedures for the conduct of voting by the Board, as specified in this subsection. At the end of the 3 year period beginning on the effective date of the order, the Board may recommend to the Secretary changes in such procedures for the conduct of voting by the Board, and the Secretary may amend the order to make such recommended changes in voting procedures. Such amendment to the order shall not be subject to a referendum of producers.

(2) Each member of the Board shall be entitled, in any vote conducted by the Board, to cast the number of votes determined under the following rules:

(A) Each member shall be entitled to cast one vote unless a roll call vote is conducted. On a roll call vote, each member shall be entitled to cast such additional votes as are assigned to the member under subparagraph (B).

(B) The additional votes that each member is assigned for roll call votes shall be computed as follows:

(i) Except as provided in clause (ii), each unit shall be allotted one vote for each percent, or portion of a percent, of the total amount of assessments remitted to the Board that was remitted from the unit, net of any refunds made under subsection (j)(2), on the average, during each of the 3 previous fiscal years of the Board.

(ii)(I) During the first fiscal year of the Board, each unit shall be allotted one vote for each percent, or portion of a percent, of the total production of soybeans in the United States that was produced in the unit, on the average, during each of the 3 immediately preceding crop years.

(II) The order shall provide appropriate adjustments of the procedure for the allotment of votes under clause (i) to apply to allotments of votes during the second and third fiscal years of the Board.

(iii) A unit's total votes under clause (i) or (ii) shall be divided equally among all the members representing that unit. The procedures established by the order shall provide for the equitable disposition of fractional votes assigned to a member under such division of a unit's votes.

(3)(A) Except as provided in subparagraph (B), a motion shall carry if approved by a simple majority of members of the Board casting votes.

(B) Any member of the Board may call for a roll call vote on any motion. Except as otherwise provided in the bylaws adopted by the Board, whenever a roll call vote is conducted, the motion shall carry only if approved by a simple majority of all votes cast and a simple majority of all units voting, with the vote of each unit determined by a simple majority of all votes cast by members in that unit.

(4) In any vote conducted by a committee of the Board, each member of the committee shall have one vote.

(5) A member may not cast votes by proxy.

(e) BUDGETS.—The order shall provide that the Board shall develop budgets on a fiscal year basis of anticipated expenses and disbursements under the order, including probable costs of administration and promotion, research, consumer information, and industry information projects. The Board shall submit such budgets or any substantial modification thereof to the Secretary for the Secretary's approval. In approving or disapproving such budget or modification, the Secretary shall, among other considerations, ensure that the activities conducted under the order do not cause a duplication of efforts of, or ineffective use of resources under, any other soybean promotion, research, consumer information, or industry information on the State or national level. Each such budget or modification shall be approved or disapproved by the Secretary within 45 days after the Secretary receives the budget or modification. No expenditure of funds may be made by the Board unless such expenditure is authorized under a budget or modification approved by the Secretary.

(f) PLANS AND PROJECTS.—The order shall provide that the Board shall review or, on its own initiative, develop plans or projects of promotion, research, consumer information, and industry information, to be paid for with funds received by the Board.

(g) ADMINISTRATION.—(1) The order shall provide that the Board shall be responsible for all expenses of the Board.

(2)(A) The order shall provide that the Board may establish an administrative staff or facilities of its own or contract for the use of the staff and facilities of national, nonprofit, producer-governed organizations that represent producers of soybeans.

(B) If the Board establishes an administrative staff of its own, the Board is authorized to expend for administrative staff salaries and benefits an amount not to exceed one percent of the projected level of assessments to be collected by the Board, net of any refunds to be made under subsection (j)(2), for that fiscal year.

(C) If the staff of national, nonprofit, producer-governed organizations that represent producers of soybeans are used by the Board, the staff of such organizations shall not receive compensation directly from the Board, but such organizations shall be reimbursed for the reasonable expenses of their staffs, including salaries, incurred in performing staff duties on behalf of, and authorized by, the Board.

(3) The order shall provide that costs incurred by the Board in administering the order (including the cost of staff but not including administrative costs incurred by

the Secretary) during any fiscal year shall not exceed 5 percent of the projected level of assessments to be collected by the Board, net of any refunds to be made under subsection (j)(2), for that fiscal year.

(h) CONTRACTS AND AGREEMENTS.—(1) To ensure coordination and efficient use of funds, the order shall provide that the Board may enter into contracts or agreements for the implementation and carrying out of the activities authorized by this Act with national, nonprofit, producer-governed organizations that represent producers of soybeans, and for the payment thereof with funds received by the Board under the order.

(2) To enhance coordination, the Board, when entering into contracts or agreements for the implementation and carrying out of activities authorized by this Act, shall ensure that all plans or projects implemented for consumer information, industry information, promotion, or research are implemented by a single entity. There shall not be in force, at any one time, more than one contract or agreement for implementation of plans or projects for consumer information, for industry information, for promotion, or for research, except that, upon approval of the Secretary, the Board may contract with qualified State soybean boards to implement plans or projects within their respective States.

(3) Any such contract or agreement shall provide that—

(A) the contracting party shall develop and submit to the Board a plan or project together with a budget or budgets that shall show estimated costs to be incurred for such plan or project;

(B) the plan or project shall not become effective unless it has been approved by the Secretary, and

(C) the contracting party shall keep accurate records of all of its transactions, account for funds received and expended, including staff time, salaries, and expenses expended on bahalf of Board activities, make periodic reports to the Board of activities conducted, and make such other reports as the Board or the Secretary may require.

(i) BOOKS AND RECORDS OF THE BOARD.—The order shall require the Board to—

(1) maintain such books and records, which shall be available to the Secretary for inspection and audit, as the Secretary may prescribe,

(2) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe, and

(3) account for the receipt and disbursement of all funds entrusted to the Board.

The Board shall cause its books and records to be audited by an independent auditor at the end of each fiscal year and a report of such audit to be submitted to the Secretary. The Secretary shall make such report available to the public upon request.

(j) ASSESSMENTS.—(1)(A)(i) The order shall provide that each first purchaser of soybeans from a producer shall collect, in the manner prescribed by the order, an assessment from the producer and remit the assessment to the Board. If a qualified State soybean board is operating in the State, the Board shall permit such State board to collect such assessments on behalf of the Board from first purchasers in the State in which such board is operating.

(ii) The rate of assessment prescribed by the order shall be one-half of 1 percent of the net market price of soybeans bought or otherwise acquired by the first purchaser from the producer.

(iii) No more than one assessment shall be made with respect to any particular soybeans.

(iv) The order shall provide that no person may engage in any scheme or device regarding the net market price of soybeans for purposes of affecting the assessment under the order.

(B) The order shall provide that any person processing soybeans of that person's own production and marketing such soybeans or soybean products made from such soybeans shall remit to the Board or the qualified State soybean board, in the manner prescribed by the order, an assessment established at a rate equivalent to the rate provided for in subparagraph (A)(ii).

(2)(A) The order shall provide that, during the period prior to the approval of the continuation of the order in the referendum provided for in section 6(a), as determined by the Secretary, each producer shall have the right to demand and receive from the Board a refund of any assessment collected from such producer if—

(i) such producer is responsible for paying the assessment; and

(ii) such producer does not support the programs, projects, or activities implemented under the order.

(B) Subject to the provisions of subparagraph (C)(i), any demand by a producer for a refund of an assessment under this paragraph shall be made in accordance with

regulations, on a form, and within the time period, not to exceed 90 days from the date of collection, prescribed by the Board.

(C)(i) In each State in which a qualified State soybean board collects assessments, as provided in paragraph (1)(A)(i), producers shall submit demands for refunds of assessments to the qualified State soybean board. Such board shall process such submissions under procedures established under State statute applicable to refunds of assessments on soybeans, except that if no refunds are allowed under State statute, such submissions shall be processed under procedures established under this paragraph.

(ii) In each State not specified in clause (i), producers shall submit demands for refunds of assessments directly to the Board.

(D) Subject to the provisions of subparagraph (C)(i), each refund to a producer of an assessment under this paragraph shall be made as soon as practicable, but in no case more than 60 days, after submission of proof satisfactory to the qualified State soybean board or the Board that the producer paid the assessment for which refund is demanded.

(3) The assessments shall be used for payment of the expenses incurred in implementation and administration of the order, the establishment of a reasonable reserve, and reimbursement to the Secretary of administrative costs incurred by the Secretary after the order has been proposed.

(4) A producer who can establish that such producer is contributing to a qualified State soybean board shall receive credit, in determining the assessment due to the Board from such producer, for contributions to the qualified State soybean board of up to one-quarter of 1 percent of the net market price of soybeans or the equivalent thereof. A producer may receive a credit under this paragraph only if the contribution is to the qualified State soybean board in the State in which the soybeans are produced, except that the Board, with the approval of the Secretary, may authorize exceptions to such State-of-origin rule as appropriate to ensure effective coordination of collection procedures among States.

(5) The procedures in the order for the collection of assessments shall ensure, to the extent practicable, that such soybeans are subject to a single process of assessment under the order.

(k) CREDIT FOR CERTAIN COSTS TO STATES.—The order shall provide that the Board may provide a credit against the amount of collected assessments due from each qualified State soybean board of an amount not to exceed one-half of any fees paid to State governmental agencies or first purchasers for collection of the assessments if the payment of such fees by the qualified State soybean board is required by State statute enacted prior to the date of enactment of this Act. Any credit provided to any qualified State soybean board under this subsection may not exceed 2.5 percent of the amount of assessments collected and remitted to the Board under subsection (j).

(l) MINIMUM LEVEL OF ASSESSMENTS TO STATES.—(1) The order shall contain provisions to ensure that, during the period prior to conduct of the referendum provided for in section 6(a), each qualified State soybean board retains annually an amount of money equal to the average amount that the State board collected from assessments during each of the State board's fiscal years 1984 through 1988, excluding the year in which such collections were the highest and the year in which such collections were the lowest, as determined by the Secretary and subject to paragraph (3).

(2) The order shall provide, effective after the conduct of the referendum provided for in section 6(a), subject to paragraph (3), that the Board annually shall provide a credit to each qualified State soybean board of an amount by which—

(A) the amount equal to one cent times the average number of bushels of soybeans produced in the State during each of the preceding 5 years, excluding the year in which the production is the highest and the year in which the production is the lowest, exceeds

(B) the total amount collected by the qualified State soybean board from assessments on producers under this Act and State law minus the amount of assessments remitted to the Board during such year under subsection (j).

(3) The total amount of assessment funds retained by a qualified State soybean board under paragraph (1) or (2) and subsection (j)(4) for a year may not exceed the total amount of assessment collected in the State under subsection (j), net of any refunds made under subsection (j)(2), for that year.

(m) INVESTMENT OF FUNDS.—The order shall provide that the Board, with the approval of the Secretary, may invest funds received by the Board under the order, pending their disbursement, only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest bearing account or certificate of deposit of a bank that is a member of

the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States. Income from any such investment may be used only for such purposes as the invested funds may be used.

(n) PROHIBITION.—(1) Except as otherwise provided in paragraph (2), the order shall prohibit any funds collected by the Board under the order from being used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign, State, or United States territory or possession government, or any political subdivision thereof.

(2) The prohibition in paragraph (1) shall not apply to—

(A) the development and recommendation of amendments to the order;

(B) the communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research, consumer information, and industry information under the order; or

(C) any action designed to market soybeans or soybean products directly to a foreign government or political subdivision thereof.

(o) BOOKS AND RECORDS OF FIRST PURCHASERS AND CERTAIN PRODUCERS.—(1) The order shall require that each first purchaser of soybeans and any person processing soybeans of that person's own production maintain and make available for inspection by the Board or the Secretary such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order. The order shall exempt small producers processing soybeans of their own production from such recordkeeping and reporting requirements if they are not required to pay assessments under the order.

(2)(A) Information maintained under paragraph (1) shall be made available to the Secretary as is appropriate for the administration or enforcement of this Act, or any order or regulation issued under this Act.

(B) The Secretary shall authorize the use under this Act of information regarding first purchasers that is accumulated under a law or regulation other than this Act or regulations under this Act.

(3)(A) Commercial or financial information obtained under paragraphs (1) and (2) and that is privileged or confidential shall be kept confidential by all officers and employees of the Department, the Board, and agents of the Board, subject to the provisions of subparagraph (B).

(B) Information obtained under the authority of this Act shall be made available to any agency or officer of the Federal Government for—

(i) the implementation of this Act;

(ii) any investigatory or enforcement action necessary for the implementation of this Act; or

(iii) any civil or criminal law enforcement activity if the activity is authorized by law.

(4) Any person who intentionally or knowingly violates the provisions of this subsection, upon conviction, shall be subject to a fine of not more than $1,000, or to imprisonment for not more than one year, or both, and if an agent of the Board or an officer or employee of the Department, shall be removed from office.

(p) INCIDENTAL TERMS AND CONDITIONS.—The order shall provide terms and conditions, not inconsistent with the provisions of this Act, as necessary to effectuate the provisions of the order, including provisions for the assessment of a penalty for each late payment of assessments under subsection (j).

SEC. 6. REFERENDA.

(a) INITIAL REFERENDUM.—Not earlier than 18 months nor later than 36 months following the issuance of an order under section 4 of this Act, the Secretary shall conduct a referendum for the purpose of ascertaining whether the other then in effect shall be continued. Such referendum shall be conducted among producers who, during a representative period as determined by the Secretary, have been engaged in the production of soybeans. Such order shall be continued only if the Secretary determines that the order has been approved by not less than a majority of the producers voting in the referendum. If continuation of the order is not approved by a majority of those voting in the referendum, the Secretary shall terminate the collection of assessments under the order within 6 months after the referendum and shall terminate the order in an orderly manner as soon as practicable.

(b) ADDITIONAL REFERENDA.—(1)(A) After the initial referendum on an order, the Secretary shall conduct additional referenda, as described in subparagraph (C), if requested by a representative group of producers, as described in subparagraph (B).

(B) An additional referendum on an order shall be conducted if requested by 10 percent or more of the producers who during a representative period have been en-

gaged in the production of soybeans, of which group of requesting product not in excess of one-fifth are producers in any one State, as determined by the Secretary.

(C) Each additional referendum shall be conducted among all producers who, during a representative period, as determined by the Secretary, have been engaged in the production of soybeans to determine whether such producers favor the termination of the order.

(2) If the Secretary determines, in any referendum conducted under paragraph (1), that termination of the order is favored by a majority of the producers voting in the referendum, the Secretary shall terminate, as appropriate, collection of assessments under the order within 6 months after such determination and shall terminate the order, as appropriate, in an orderly manner as soon as practicable after such determination.

(3)(A) To facilitate the periodic determination as to whether producers favor the conduct of an additional referendum under this subsection, the Secretary, 5 years after the conduct of a referendum under this section and every 5 years thereafter for as long as an order is in effect, shall provide soybean producers an opportunity to request an additional referendum, as provided in this paragraph.

(B)(i) To implement the requirements of subparagraph (A), the Secretary shall establish a procedure under which producers may request a reconfirmation referendum in person at county extension offices during a period established by the Secretary, or as provided in clause (ii).

(ii) In lieu of making such requests in persons, producers may make requests by mail. Mail-in requests must be postmarked no later than the end of the period established under clause (i) for in-person requests. To facilitate such submission of requests by mail, the Secretary may make mail-in request forms available to producers.

(C) The Secretary shall publish a notice in the Federal Register, and the Board shall provide written notification to producers, not later than 60 days prior to the end of the period established under subparagraph (B)(i) for in-person requests, of the producers' opportunity to request the additional referendum. Such notification shall explain the producers rights to, and the procedures specified in this subsection for, the conduct of an additional referendum, the propose of the referendum, and the date and method by which producers can act to request the additional referendum under this paragraph. The Secretary shall take such other actions as the Secretary determines necessary to ensure that producers are made aware of the opportunity to request an additional referendum on the order.

(D) As soon as practicable following the submission of requests for a reconsideration referendum, the Secretary shall determine whether a sufficient number of producers have requested an additional referendum, and take other steps to conduct an additional referendum, as required under paragraph (1).

(E) Any additional referendum requested under the procedures provided in this paragraph shall be conducted not later than one year after the Secretary determines that a representative group of producers, as described in paragraph (1)(B), have requested the conduct of such referendum.

(c) PROCEDURES.—(1) The Secretary shall be reimbursed from assessments collected by the Board for any expenses incurred by the Secretary in connection with the conduct of any activity required under this section, except for the salaries of Government employees.

(2) Each referendum shall be conducted for a reasonable period (not to exceed 3 days) established by the Secretary, under a procedure whereby producers intending to vote in the referendum shall certify that they were engaged in the production of soybeans during the representative period and, at the same time, shall be provided an opportunity to vote in the referendum.

(3) Referenda shall be conducted at county extension offices and provision shall be made for absentee mail ballots to be provided upon request.

SEC. 7. PETITION AND REVIEW.

(a) PETITION.—Any person subject to an order issued under this Act may file with the Secretary a petition stating that such order, any provision of such order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or an exemption from the order. The petitioner shall be given an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary. After such hearing, the Secretary shall make a ruling on the petition.

(b) REVIEW.—The district courts of the United States in any district in which a person who is a petitioner under subsection (a) resides or carries on business are hereby vested with jurisdiction to review the ruling on such person's petition, if a

complaint for that purpose if filed within twenty days after the date of the entry of a ruling by the Secretary under subsection (a). Service of process in such proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure. If the court determines that such ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to make such further action as, in the opinion of the court, the law requires.

SEC. 8. ENFORCEMENT.

(a) IN GENERAL.—(1) Each district court of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain a person from violating, an order or regulation issued by the Secretary under this Act.

(2) A civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation if the Secretary believes that the administration and enforcement of this Act would be adequately served by providing a suitable written notice or warning to the person who committed such violation or by administrative action under subsection (b).

(b) ADMINISTRATIVE REMEDIES.—(1)(A) A person who willfully violates an order or regulation issued by the Secretary under this Act may be assessed by the Secretary—

(i) a civil penalty of not more than $1,000 for each such violation; and

(ii) in the case of a willful failure to pay, collect, or remit an assessment as required by the order, an additional penalty equal to the amount of such assessment.

(B) Each such violation shall be a separate offense.

(C) In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring such person to cease and desist from violating such order or regulation.

(D) No order assessing a penalty or cease and desist order may be issued by the Secretary under this paragraph unless the Secretary gives the person against whom the order is issued notice and opportunity for a hearing on the record with respect to such violation.

(E) An order assessing a penalty or cease and desist order issued under this paragraph by the Secretary shall be final and conclusive unless the person against whom the order is issued files an appeal from such order with the appropriate district court of the United States, as provided in paragraph (2), not later than 30 days after the date of such order.

(2)(A) A person against whom an order is issued under paragraph (1) may obtain review of such order in the district court of the United States for the district in which such person resides or does business, or in the United State district court for the District of Columbia, by—

(i) filing a notice of appeal in such court not later than 30 days after the date of such order; and

(ii) simultaneously sending a copy of such notice by certified mail to the Secretary.

(B) The Secretary shall file promptly in such court a certified copy of the record on which the Secretary found that the person had committed a violation.

(C) A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(3)(A) A person who fails to obey a valid cease and desist order issued under paragraph (1) by the Secretary, after an opportunity for a hearing, shall be subject to a civil penalty assessed by the Secretary of not more than $500 for each offense.

(B) Each day during which such failure continues shall be considered a separate violation of such order.

(4)(A) If a person fails to pay a valid civil penalty imposed under this subsection by the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in the district court of the United States in any district in which the person resides or conducts business.

(B) In such action, the validity and appropriateness of the order imposing such civil penalty shall not be subject to review.

(c) OTHER REMEDIES UNAFFECTED.—The remedies provided in subsections (a) and (b) shall be in addition to, and not exclusive of, other remedies that may be availabl

SEC. [illegible] VESTIGATIONS; POWER TO SUBPOENA; AID OF COURTS.

(a) INVESTIGATIONS.—The Secretary may make such investigations as the Secretary deems necessary—

(1) for the effective administration of this Act, or

(2) to determine whether any person subject to the provisions of this Act has engaged or is about to engage in any act that constitutes or will constitute a violation of any provision of this Act, or of any order or regulation issued under this Act.

(b) POWER TO SUBPOENA.—For the purpose of any such investigation, the Secretary may require the production of any records that are relevant to the inquiry. The production of any such records may be required from any place in the United States.

(c) AID OF COURTS.—In case of contumacy, by, or refusal to obey a subpoena to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the production of records. The court may issue an order requiring such person to appear before the Secretary to produce records. Any failure to obey such order of the court may be punished by such court as a contempt thereof. Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

SEC. 10. ADMINISTRATIVE PROVISIONS.

(a) CONSTRUCTION.—Except as provided in subsection (b), nothing in this Act may be construed to—

(1) preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State; or

(2) authorize the withholding of any information from Congress.

(b) STATE LAWS.—In order to ensure the proper administration of this Act, any provision of State law automatically requiring a State referendum relating to the continuation or termination of a qualified State soybean board shall, to the extent it automatically requires such a referendum, be suspended for the period beginning on the date an order is issued under section 4 and ending 18 months after the referendum on such order is conducted under section 6(a). Such suspension shall not be construed to apply to any State referendum regarding a State soybean promotion program that is originated by soybean producers.

(2) In order to ensure adequate funding of the operations of qualified State soybean boards under this Act, whenever an order is in effect under this Act, no State law or regulation that limits the rate of assessment that the qualified State soybean board in the State may collect from producers on soybeans board in the state may collect from producers on soybeans produced in such State, or that has the effect of limiting such rate, may be applied to prohibit such State board from collecting, and expending for authorized purposes, assessments from producers of up to the full amount of the credit authorized for producer contributions to qualified State soybean boards under section 5(j)(4).

SEC. 11. REGULATIONS.

The Secretary may make such regulations as may be necessary to carry out the provisions of the Act.

SEC. 12. AUTHORIZATION.

There are hereby authorized to be appropriated annually such funds as are necessary to carry out the provision of this Act. The funds so appropriated shall not be available for payment of the expenses or expenditures of the Board in administering any provision of any order issued under this Act.

BRIEF EXPLANATION

H.R. 2209, the Soybean Promotion, Research, and Consumer Information Act, would:

(1) provide for the Secretary of Agriculture to issue, upon request of an interested person or on the Secretary's own initiative, promotion, research, and consumer information orders, which are national in scope, and applicable to producers and first purchasers of soybeans;

(2) specify the terms and conditions that must be included in such a soybean order, including:

(a) the establishment of the United Soybean Board to administer the order, with representation by soybean producers;

(b) the requirement that the Board may establish an administrative staff and facilities or contract for the use of staff and facilities of national, nonprofit, producer-governed organizations that represent producers of soybeans;

(c) the requirement that costs incurred by the Board in administering the order (including the cost of staff but not including administrative costs incurred by the Secretary) not exceed 5 percent of revenues;

(d) the requirement that the budget of the Board must be approved by the Secretary of Agriculture;

(e) the requirement that each first purchaser of soybeans collect an assessment of one-half of 1 percent of the net market price of soybeans from producers which, prior to the approval of the order, may be refunded to the producer upon demand;

(f) the requirement that the Board may enter into contracts and agreements with national, nonprofit, producer-governed organizations that represent producers of soybeans to implement and carry out the activities within a program area authorized by the bill;

(g) the requirement that the Board maintain books and records to be audited annually by an independent auditor and a report of such audit be submitted to the Secretary and made available to the public; and

(h) the requirement that first purchasers and producers processing their own soybeans maintain books and records;

(3) provide for an initial referendum of soybean producers between 18 and 36 months after the issuance of an order, to ascertain whether the order shall be continued;

(4) provide for additional referenda upon the request of 10 percent or more of soybean producers; and

(5) provide for the enforcement of the provisions of the order through civil money penalties of up to $1,000 per violation, plus double any assessments required by the order.

Purpose and Need

I

H.R. 2209, the Soybean Promotion, Research, and Consumer Information Act will authorize the creation of a national program of soybean and soybean-product promotion, research, consumer information, and industry information.

The legislation would authorize the United Soybean Board to conduct a number of activities to increase the potential of the soybean industry in both domestic and foreign markets. Such activities would likely include: (1) advertising, through the electronic and print media, to increase consumer and commercial awareness of the uses and benefits of soybean products; (2) research on the nutritional components and attributes of soybean products; (3) the development of new food and non-food uses of soybeans; (4) research into production systems to enable growers of soybeans and producers of soybean products to reduce costs and increase profit margins; (5) foreign market development programs to maintain, develop, and

expand markets for U.S. grown and produced soybeans and soybean products; and (6) identifying and analyzing export sales of soybeans and soybean products.

H.R. 2209 in general follows the model for other agricultural commodity research and promotion programs. Since the first such program was developed in 1935 for Florida citrus, the Federal and state governments have established more than 312 promotion programs covering over eighty different commodities. Presently, more than ninety percent of all farmers contribute almost $450 million annually to such programs.

Commodities covered by national programs which are overseen by the Department of Agriculture include beef, cotton, dairy, eggs, honey, pork, potatoes, watermelons, wool, lamb, and mohair. In addition, farmers contribute to similar research and promotion programs which have been organized voluntarily, though these account for only fifteen percent of total promotion efforts. Existing programs for other commodities similar to the program established in H.R. 2209 have raised the following amounts in the past year: the cotton program collected $39.5 million, the dairy program raised $77.2 million, and the beef, pork, honey, and potato programs collected $41.7, $26.3, $2.5 and $5.9 million, respectively.

Presently, soybean farmers in twenty-six states contribute to state soybean promotion programs which in turn conduct a variety of research and market development projects. In addition, there exists a national nonprofit organization that implements foreign market development activities in cooperation with the Department of Agriculture's Foreign Agricultural Service, conducts research projects on soybeans, and represents the interests of soybean producers. However, its activities are conducted for the primary benefit of its members and are not always operated on a national, coordinated scale with the activities of soybean promotion programs on behalf of all soybean growers and the soybean industry.

II

Approximately 450,000 U.S. farmers produce soybeans annually. The 1989 harvest is estimated at 1.9 billion bushels, of which half is destined for the world market. In 1988, the total export value of the U.S. soybean crop was approximately $7 billion.

Soybeans are the world's major source of vegetable protein and oil. Eighty percent of each sixty-pound bushel of soybeans is processed into soybean meal with the remaining portion being processed into soybean oil. Each person in the U.S. uses about thirty-five pounds of soybean oil annually in the form of cooking oils, salad dressings, antibiotics, adhesives, food toppings, mayonnaise, cake mixes, wallboards, pet foods, newspaper inks, and animal feeds. Over the past decade, demand for soybeans and soybean products has grown at a rapid rate of 4 to 5 percent annually.

Ironically, during this time, U.S. farmers have seen their share of the world market for soybeans and soybean products shrink. U.S. farmers, although they have lost market share over the past decade, clearly still dominate the world soybean market. However, if trends continue at the current rate, by 1995 the U.S. will be re-

placed by South America as the leading producer and exporter of soybeans.

III

The European Economic Community has traditionally been the largest regional market for the U.S., and until this year, has bought half of U.S. soy exports. The Soviet Union has the potential to become the U.S.'s largest customer, however, this potential is threatened by the U.S.'s major competitors, Argentina and Brazil. Japan buys more soybeans from the U.S. than any other single nation in the world, yet South America has been selling increasing amounts of soybeans to them. Other major foreign customers of the U.S. include Taiwan, South Korea, and Mexico. However these markets are threatened by increased competitive pressure.

While extensive research has expanded yields in competing countries, research efforts in the U.S. have not kept pace with their advances, and U.S. soybean productivity has not kept pace with foreign competition. For example, national average soybean yields have been virtually stagnant for the past decade as foreign yields and production expanded. As a result, South American farmers, for example, have replaced every lost American soybean acre with at least one of their acres. In order for American soybean farmers to be more competitive, funds generated under H.R. 2209 could be used for soybean genetics research to increase yields and develop soybean seed varieties which would be less capital intensive.

H.R. 2209 will create major programs targeted at reclaiming and expanding U.S. export markets for soybeans in countries such as the Soviet Union, China, and India and countering the trend of declining market share of the last decade. Programs would also be designed to educate further potential foreign as well as domestic consumers of the health, environmental and industrial benefits of using soybeans and its by-products.

Increased soybean research is needed to develop and refine uses for soybeans and soybean by-products. Even though U.S. consumers use more soybean oil than all other vegetable oils combined, eighty-five percent of consumers cannot name soybean oil when asked to name vegetable oil.

For industrial uses, research has found soy oil to be an alternative to petroleum-based ink. Last year, fewer than ten newspapers across the country used soy ink in their printing presses. Presently, 1,000 newspapers are using it in theirs. If soy ink were to capture the newspaper and magazine market, it would utilize around 100 million bushels or 3 million acres of soybeans per year. Since soy oil is biodegradable, the environment benefits from the development of new soy oil uses as a substitute for petroleum or other chemically based products. Research has already begun developing ways to replace petroleum-based fertilizers with soy-oil based fertilizers which will result in additional positive effects on the environment, especially in improving the quality of groundwater.

Increased soybean and soybean by-product promotion and research will also educate lesser-developed countries who face large-scale protein deficiencies in their diets. For example, for calcium

deficiencies, soy milk, another by-product of soybeans, is a comparable nutritional substitute for dairy milk.

Through the authorities provided in H.R. 2209, the U.S. soybean industry and soybean farmers will have a mechanism to fund and implement efforts to ensure the competitiveness of the U.S. soybean industry in the world market as well as to expand and increase demand for soybeans in the domestic market.

SECTION-BY-SECTION ANALYSIS

SECTION 1—SHORT TITLE AND TABLE OF CONTENTS

Section 1 provides that the bill may be cited as the "Soybean Promotion, Research, and Consumer Information Act". It also contains a table of contents listing the sections of the bill.

SECTION 2—FINDINGS AND DECLARATION OF POLICY

Section 2, in subsection (a), states the congressional findings that—

(1) soybeans are an important source of nutritious foods that are a valuable part of the human diet and are an important feedstuff for the livestock industry;

(2) the production of soybeans plays a significant role in the economy of the United States in that soybeans are produced by thousands of soybean producers, processed by numerous processing entities, and soybeans and soybean products produced in the United States are consumed by people and livestock throughout the United States and foreign countries;

(3) soybeans and soybean products should be readily available and marketed efficiently to ensure that consumers have an adequate supply of soybean products at a reasonable price;

(4) the maintenance and expansion of existing markets and development of new markets for soybeans and soybean products are vital to the welfare of soybean producers and processors and those concerned with marketing soybeans and soybean products, as well as to the general economy of the United States, and are necessary to ensure the ready availability and efficient marketing soybeans and soybean products;

(5) there exist established State and national organizations conducting soybean promotion, research, and consumer education programs that are valuable to the efforts of promoting the consumption of soybeans and soybean products;

(6) the cooperative development, financing, and implementation of a coordinated national program of soybean promotion, research, consumer information, and industry information are necessary to maintain and expand existing markets and develop new markets for soybeans and soybean products; and

(7) soybeans and soybean products move in interstate and foreign commerce, and soybeans and soybean products that do not move in such channels of commerce directly burden or affect interstate commerce in soybeans and soybean products.

Section 2, in subsection (b), will declare that it is the policy of Congress that it is in the public interest to authorize the establishment of an orderly procedure for developing, financing through as-

sessments on domestically-produced soybeans, and implementing a program of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace, to maintain and expand existing domestic and foreign markets and uses for soybeans and soybean products, and to develop new markets and uses for soybeans and soybean products.

Section 2, in subsection (c), will provide that nothing in the bill may be construed to control soybean production or otherwise limit the right of individuals to produce soybeans.

SECTION 3—DEFINITIONS

Section 3 will define terms used in the bill as follows:

(1) the term "Board" to mean the United Soybean Board established under section 5(b);

(2) the term "commerce" to include interstate, foreign, and intrastate commerce;

(3) the term "consumer information" to mean information that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of soybeans or soybean products;

(4) the term "Department" to mean the Department of Agriculture;

(5) the term "first purchaser" to mean any person buying or otherwise acquiring from a producer soybeans produced by such producer, or the Commodity Credit Corporation, in any case in which soybeans are pledged as collateral for a loan issued under any price support loan program administered by the Commodity Credit Corporation;

(6) the term "industry information" to mean information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the soybean industry, and activities to enhance the image of the soybean industry;

(7) the term "marketing" to mean the sale or other disposition of soybeans or soybean products in any channel of commerce;

(8) the term "net market price" to mean the sales price or other value received by a producer for soybeans after adjustments for any premium or discount based on grading or quality factors, as determined by the Secretary, or for soybeans pledged as collateral for a loan issued under any price support loan program administered by the Commodity Credit Corporation, the principal amount of the loan;

(9) the term "order" to mean an order issued under section 4;

(10) the term "person" to mean any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity;

(11) the term "producer" to mean any person engaged in the growing of soybeans in the United States who owns, or who shares the ownership and risk of loss of, such soybeans;

(12) the term "promotion" to mean any action, including paid advertising, technical assistance, and trade servicing ac-

tivities, to enhance the image or desirability of soybeans or soybean products in domestic and foreign markets, and any activity designed to communicate to consumers, importers, processors, wholesalers, retailers, government officials, or others information relating to the positive attributes of soybeans or soybean products or the benefits of importation, use, or distribution of soybeans and soybean products;

(13) the term "qualified State soybean board" to mean a State soybean promotion entity that is authorized by State law, or if no such entity exists in a State, to mean a soybean producer-governed entity that is organized and operating within a State, receives voluntary contributions and conducts soybean promotion, research, consumer information, or industry information programs, and meets criteria established by the Board relating to the qualifications of such entity to perform duties under the order, as determined by the Board, and is recognized by the Board as the soybean promotion and research entity within the State; (Note: The Committee intends that the U.S. Department of Agriculture (USDA), in developing regulations and administering the national program, take steps to facilitate the qualification of existing State soybean promotion entities as qualified State soybean boards. The Committee also intends that the regulations and administrative actions of USDA related to the qualifications of existing State boards not force States to revise current programs that use soybean assessments or their administration of such programs as a condition for qualifying, so long as the State's use of such assessments falls generally within the scope of H.R. 2209.)

(14) the term "research" to mean any type of study to advance the image, desirability, marketability, production, product development, quality, or functional or nutritional value of soybeans or soybean products, including any research activity designed to identify and analyze barriers to export sales of soybeans and soybean products;

(15) the term "Secretary" to mean the Secretary of Agriculture;

(16) the term "soybean products" to mean products produced in whole or in part from soybeans or soybean by-products;

(17) the term "soybeans" to mean all varieties of Glycine max or Glycine soya; and

(18) the terms "State" and "United States" to consist of the fifty States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

SECTION 4—ISSUANCE AND AMENDMENT OF ORDERS

Section 4, in subsection (a), will, subject to the provisions of subsection (b), require the Secretary to issue orders under the bill applicable to producers and first purchasers of soybeans. Any such order must be national in scope. In addition, not more than one order may be in effect under the bill at any one time.

Section 4(b), in paragraph (1), will authorize—

(1) the Secretary to propose the issuance of an order under the bill, or

(2) an association of soybean producers or any other person that would be affected by an order issued pursuant to the bill to request the issuance of, and submit a proposal for, an order.

Section 4(b), in paragraph (2) will require the Secretary to publish a proposed order and give due notice and opportunity for public comment on the proposed order not later than 30 days after the receipt of a request and proposal for an order, or whenever the Secretary determines to propose an order.

Section 4(b), in paragraph (3), will require the Secretary to issue an order, after notice and opportunity for public comment are given as provided in paragraph 4(b)(2), taking into consideration the comments received and including in the order provisions necessary to ensure that the order is in conformity with the requirements under the bill. The order must be issued and become effective not later than 180 days following publication of the proposed order.

Section 4, in subsection (c), will authorize the Secretary from time to time to amend any order. Except as otherwise provided in sections 5(b)(2)(F) and 5(d)(1), the provisions of the bill applicable to orders will be applicable to amendments to orders.

SECTION 5—REQUIRED TERMS IN ORDERS

Section 5, in subsection (a), will specify the terms and conditions required in any order issued under the bill.

Section 5(b), in paragraph (1), will require the order to provide for the establishment of, and appointment of members to, a United Soybean Board to administer the order. Members of the Board must be soybean producers appointed by the Secretary, on a geographic basis, from State or combined units. The cumulative number of seats on the Board will be the total of seats to which all the units are entitled.

Section 5(b), in paragraphs (2)(A) and (B), will require the Secretary to establish State units and combined units and seats on the Board for such units. Each State will be considered as a unit, unless the State has average annual soybean production of less than 3 million bushels. States with average annual soybean production of less than 3 million bushels will be grouped with other States into a combined unit. To the extent practicable, each State with average annual soybean production of less than 3 million bushels must be grouped with other states with average annual soybean production of less than 3 million bushels into a combined unit, in a manner prescribed in the order. Each combined unit must—

(1) to the extent practicable, consist of geographically contiguous States, and

(2) have an average annual production of soybeans of at least 3 million bushels.

Section 5(b)(2)(C) will provide that, subject to section 5(b)(2)(F), each State or combined unit would be entitled to a specified number of seats on the Board, depending on its average annual soybean production, as follows:

Average annual unit production:	*Number of Board seats*
Less than 15,000,000 bushels	1
15,000,000 to 69,999,999 bushels	2
70,000,000 to 199,999,999 bushels	3
200,000,000 bushels or more	4

At the end of each 3 year period beginning with the 3 year period starting on the effective date of the order, the Secretary, if necessary, must adjust any unit to conform with sections 5(b)(2)(A) and 5(b)(2)(B) and any modifications pursuant to section 5(b)(2)(F). If the Secretary makes such an adjustment, the Secretary must re-establish the seats on the board to conform with section 5(b)(2)(C) and any modifications pursuant to section 5(b)(2)(F).

For purposes of establishing units and seats on the Board and adjusting such units and seats, the Secretary will determine average annual soybean production applicable to a crop year by using the average of the 5 previous crops of soybeans, excluding the crop in which production was the highest and the crop in which production was the lowest.

Section 5(b)(2)(F) will authorize the Board to recommend to the Secretary, at the end of each 3 year period beginning with the 3 year period starting on the effective date of the order, to the extent it determines appropriate, changes in the levels of production used in sections 5(b)(2)(A), 5(b)(2)(B), and 5(b)(2)(C) in determining per-unit representation on the Board. The Secretary may amend the order to make the recommended changes in levels of production used to determine per-unit representation. This amendment to the order—

(1) will not be subject to a referendum of producers, and

(2) may not result in a unit losing Board seats to which it was entitled at the time the order was initially issued unless its average annual production (determined by using the average of the 5 previous crops of soybeans, excluding the crop in which production was the highest and the lowest), declines below the initial levels required for representation.

Section 5(b)(3), in subparagraph (A), will require the Secretary to appoint soybean producers to seats established under section 5(b)(2) from nominations submitted by each unit. Each unit must submit to the Secretary at least 2 nominations for each appointment to the Board to which the unit is entitled.

Section 5(b)(3), in subparagraph (B), will require the Secretary to solicit nominations for each seat on the initially-established Board as follows:

(1) if the seat is for a State unit, the Secretary must solicit nominations of persons from the State soybean board in the State that submits satisfactory evidence to the Secretary that such board meets the criteria of section 3(13), other than the criteria in section 3(13)(C),[1] of the bill. If no such organization

[1] If there is no State soybean promotion entity authorized by State law, section 3(13)(C) of the bill requires that a "qualified State soybean board" must meet criteria established by the Board relating to the qualifications of a soybean producer-governed entity to perform duties under the order, as determined by the Board, and be recognized by the Board as the soybean promotion and research entity within the State. Since by definition the Board will not be in existence when the initial Board is being formed, the requirements of section 3(13)(C) could not apply in forming the initial Board.

exists in the unit, the Secretary will solicit nominations for appointments in such manner as the Secretary determines appropriate.

(2) if the seat is for a combined unit, the Secretary must solicit nominations of persons in such manner as the Secretary determines appropriate, taking into consideration the recommendations of any State soybean board operating in the unit that submits satisfactory evidence to the Secretary that such board meets the criteria of section 3(13), other than section 3(13)(C) of the bill.

Section 5(b)(3), in subparagraph (C), will require the Secretary to solicit nominations for each subsequent appointment to a seat on the Board as follows:

(1) Nominations of persons for each seat to which a State unit is entitled will be made by the qualified State soybean board in the unit. If no such organization exists in the unit, the Secretary will solicit nominations for such appointment in such manner as the Secretary determines appropriate.

(2) Nominations of persons for each seat to which a combined unit is entitled in such manner as the Secretary determines appropriate, taking into consideration the recommendations of any qualified State soybean board operating in the unit.

Section 5(b), in paragraph (4), will allow the Secretary to reject any nomination submitted by a unit. If there are insufficient nominations from which to appoint members to the Board as a result of the Secretary rejecting the nominations submitted by a unit, the unit will submit additional nominations, as provided in section 5(b)(3).

Section 5(b), in paragraph (5), will require the Secretary to ensure, to the extent practicable, that at least 5 of the members appointed to the Board are members in good standing, and were members for at least 3 years prior to appointment to the Board, of a national general farm organization. Each of the 5 members must be a member of a different national general farm organization.

Section 5(b), in paragraph (6), will require each appointment to the Board to be for a term of 3 years, except that appointments to the initially-established Board will be proportionately for 1 year, 2 year, and 3 year terms. No person may serve more than 3 three-year terms. Board members will serve without compensation, but will be reimbursed by the Board for their reasonable expenses incurred in performing their duties as members of the Board.

Section 5(b), in paragraph (7), will allow the Secretary, as the Secretary determines appropriate for transition purposes and under procedures established by the Secretary, to appoint to the initially-established Board up to 3 temporary members to serve in addition to the members appointed as otherwise provided in section 5(b). Each temporary member will be appointed for a single term not to exceed 3 years. The Secretary, in making any temporary appointments to the initially-established Board, will ensure, to the extent practicable, that each State with a State soybean board that, prior to the enactment of the bill, was contributing State soybean promotion and research assessment funds to national soybean promotion and research efforts has representation on the initially-es-

tablished Board that reflects the relative contributions of such State to the national soybean promotion and research effort.

Section 5(b), in paragraph (8), will provide that the order must require the Board to hold at least one meeting annually and specify the circumstances in which additional special meetings of the Board may be held.

Section 5, in subsection (c), will provide that the order must define powers and duties of the Board and include the following powers or duties:

(1) to administer the order in accordance with its terms and provisions;

(2) to make regulations [2] to effectuate the terms and provisions of the order;

(3) to elect members of the Board to serve on committees;

(4) to submit budgets to the Secretary for the Secretary's approval or disapproval;

(5) to contract with appropriate persons to implement plans or projects;

(6) to contract with qualified State soybean boards to implement programs in their States;

(7) to receive, investigate, and report to the Secretary complaints of violations of the order;

(8) to provide the Secretary with prior notice of meetings of the Board to allow the Secretary, or a designated representative, to attend such meetings;

(9) to recommend to the Secretary amendments to the order;

(10) to provide at least annually a report to producers accounting for funds and describing programs implemented and make such report available to the public upon request; and

(11) to ensure, in carrying out the order, that the development of the budget and activities conducted under the order do not cause a duplication of efforts of, or ineffective use of resources under, any other soybean promotion, research, consumer information, or industry information program on the State or national level.

Section 5(d), in paragraph (1), will require that the order establish procedures for the conduct of voting by the Board, as specified in section 5(d). At the end of the 3 year period beginning on the effective date of the order, the Board may recommend to the Secretary changes is such procedures for the conduct of voting by the Board, and the Secretary may amend the order to make the recommended changes in voting procedures. This amendment to the order will not be subject to a referendum of procedures.

Section 5(d), in paragraph (2), will provide that each member of the Board will be entitled, in any vote conducted by the Board, to cast one vote unless a roll call vote is conducted. On a roll call vote, each member will be entitled to cast additional votes that are assigned to the member and computed as follows:

(1) Each unit will be allotted one vote for each percent, or portion of a percent, of the total amount of assessments remit-

[2] The term "regulations" used in this sense is not intended to mean a "rule" or "regulation" in the sense of a federal agency "rule" or "regulation". The Board's regulations would not have the force and effect of law.

ted to the Board that was remitted from the unit, net of any refunds made under subsection (j)(2), on the average, during each of the 3 previous fiscal years of the Board. However, during the first fiscal year of the Board, each unit will be allotted one vote for each percent, or portion of a percent, of the total production of soybeans in the United States that was produced in the unit, on the average, during each of the 3 immediately preceding crop years. The order will provide appropriate adjustments of the procedure for the allottment of votes during the second and third fiscal years of the Board.

(2) A unit's total votes will be divided equally among all the members representing that unit. The procedures established by the order must provide for the equitable disposition of fractional votes assigned to a member under a division of a unit's votes.

Section 5, in paragraph (3), will require that a motion must carry if approved by a simple majority of members of the Board casting votes. However, any member of the Board may call for a roll call vote on any motion and except as otherwise provided in the bylaws adopted by the Board, whenever a roll call vote is conducted, the motion will carry only if approved by a simple majority of all votes cast and a simple majority of all units voting, with the vote of each unit determined of all units voting, with the vote of each unit determined by a simple majority of all votes cast by members in that unit.

Section 5(d), in paragraph (4), will require, in any vote conducted by a committee of the Board, each member of the committee to have one vote.

Section 5(d), in paragraph (5) will prohibit members from casting votes by proxy.

Section 5, in subsection (e), will provide that the order must require the Board to develop budgets on a fiscal year basis of anticipated expenses and disbursements and promotion, research, consumer information, and industry information projects. The Board must submit these budgets or any substantial modification thereof to the Secretary for the Secretary's approval. In approving or disapproving such budget or modification, the Secretary must, among other considerations, ensure that the activities conducted under the order do not cause a duplication of efforts of, or ineffective use of resources under, any other soybean promotion, research, consumer information, or industry information, program on the State or national level. The Secretary must approve or disapprove each budget or modification within 45 days after the Secretary receives the budget or modification. No expenditure of funds may be made by the Board unless the expenditure is authorized under a budget or modification approved by the Secretary.

Section 5, in subsection (f), will require the order to provide that the Board must review or, on its own initiative, develop plans or projects of promotion, research, consumer information, and industry information, to be paid for with funds received by the Board.

Section 5(g), in paragraph (1), will require the order to provide that the Board must be responsible for all expenses of the Board.

Section 5(g), in paragraph (2), will require the order to provide that the Board may establish an administrative staff or facilities of

its own or contract for the use of the staff and facilities of national, nonprofit, producer-governed organizations that represent producers of soybeans. If the Board establishes an administrative staff of its own, the Board is authorized to expend for administrative staff salaries and benefits an amount not to exceed one percent of the projected level of assessments to be collected by the Board, net of any refunds to be made under section 5(j)(2), for that fiscal year. If the staff of national, nonprofit, producer-governed organizations that represent producers of soybeans are used by the Board, the staff of such organizations will not receive compensation directly from the Board, but such organizations will be reimbursed for the reasonable expenses of their staffs, including salaries, incurred in performing staff duties on behalf of, and authorized by, the Board.

Section 5(g), in paragraph (3), will require the order to provide that costs incurred by the Board in administering the order (including the cost of staff but not including administrative costs incurred by the Secretary) during any fiscal year will not exceed 5 percent of the projected level of assessments to be collected by the Board, net of any refunds to be made under section 5(j)(2), for that fiscal year.

Section 5(h), in paragraph (1), to ensure coordination and efficient use of funds, will require the order to authorize the Board to enter into contracts or agreements for the implementation and carrying out of the activities authorized by this Act with national, nonprofit, producer-governed organizations that represent producers of soybeans, and for the payment thereof with funds received by the Board under the order.

Section 5(h), in paragraph (2), to enhance coordination, will require the Board, when entering into contracts or agreements for the implementation and carrying out of activities authorized by the bill, to ensure that all plans or projects implemented for consumer information, industry information, promotion, or research are implemented by a single entity. However, upon approval of the Secretary, the Board may contract with qualified State soybean boards to implement plans or projects within their respective States. For any one of the categories of consumer information, industry information, promotion, or research, there may not be in force, at any one time, more than one contract or agreement for implementation of plans or projects within that category.

Section 5(h), in paragraph (3), will require any contract or agreement to provide that—

(1) the contracting party must develop and submit to the Board a plan or project together with a budget or budgets that shows estimated costs to be incurred for such plan or project;

(2) the plan or project must not become effective unless it has been approved by the Secretary, and

(3) the contracting party must keep accurate records of all of its transactions, account for funds received and expended, including staff time, salaries, and expenses expended on behalf of Board activities, make periodic reports to the Board of activities conducted, and make such other reports as the Board or the Secretry may require.

Section 5, in subsection (i), will provide that the order must require the Board to—

(1) maintain such books and records, which must be available to the Secretary for inspection and audit, as the Secretary may prescribe,

(2) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe, and

(3) account for the receipt and disbursement of all funds entrusted to the Board.

In addition, the Board must have its books and records audited by an independent auditor at the end of each fiscal year and must submit a report of the audit to the Secretary. The Secretary will make such report available to the public upon request.

Section 5(j), in paragraph (1), will require the order to provide that each first purchaser of soybeans from a producer must collect, in the manner prescribed by the order, an assessment from the producer and remit the assessment to the Board. If a qualified State soybean board is operating in the State, the Board must permit the qualified State soybean boards to collect the assessments on behalf of the Board from first purchasers in the State in which such board is operating The rate of assessment prescribed by the order will be one-half of 1 percent of the net market price of soybeans bought or otherwise acquired by the first purchaser from the producer and no more than one assessment will be made with respect to any particular soybeans. The order must also provide that no person may engage in any scheme or device regarding the net market price of soybeans for purposes of affecting the assessment.

In addition, the order will provide that any person processing soybeans of that person's own production and marketing the soybeans or soybean products made from those soybeans must remit to the Board or the qualified State soybean board, in the manner prescribed by the order, an assessment established at a rate equivalent to the rate provided for in section 5(j)(1)(A)(ii).

Section 5(j), in paragraph (2), will require the order to provide that, during the period prior to the approval of the continuation of the order in the referendum provided for in section 6(a), as determined by the Secretary, each producer must have the right to demand and receive from the Board a refund of any assessment collected from such producer if the producer is responsible for paying the assessment, and the producer does not support the programs, projects, or activities implemented under the order. Any demand by a producer for a refund of an assessment must be made in accordance with regulations, on a form, and within the time period, not to exceed 90 days from the date of collection, prescribed by the Board. However, in each State in which a qualified State soybean board collects assessments producers will submit demands for refunds of assessments to the qualified State soybean board. The qualified State soybean board will process these submissions under procedures established under State statute applicable to refunds of assessments on soybeans, except that if no refunds are allowed under State statute, the submissions will be processed under procedures established under section 5(j)(2). In each State not specified in section 5(j)(2)(C)(i), producers will submit demands for refunds of assessments directly to the Board. Except as provided by refund procedures under State statutes, each refund to a producer of an assessment must be made as soon as practicable, but in no

case more than 60 days, after submission of proof satisfactory to the qualified State soybean board or the Board that the producer paid the assessment for which refund is demanded.

Section 5(j), in paragraph (3), will require the assessments to be used for payment of the expenses incurred in implementation and administration of the order, the establishment of a reasonable reserve, and reimbursement to the Secretary of administrative costs incurred by the Secretary after the order has been proposed.

Section 5(j), in paragraph (4), will require that a producer who can establish that such producer is contributing to a qualified State soybean board must receive credit, in determining the assessment due to the Board from such producer, for contributions to the qualified State soybean board of up to one-quarter of 1 percent of the net market price of soybeans or the equivalent thereof. A producer may receive a credit under this paragraph only if the contribution is to the qualified State soybean board in the State in which the soybeans are produced, except that the board, with the approval of the Secretary, may authorize exceptions to such State-of-origin rule as appropriate to ensure effective coordination of collection procedures among States.

Section 5(j), in paragraph (5), will require that the procedures in the order for the collection of assessments must ensure, to the extent practicable, that the soybeans are subject to a single process of assessment under the order.

Section 5, in subsection (k), will require the order to provide that the Board may provide a credit against the amount of collected assessments due from each qualified State soybean board of an amount not to exceed one-half of any fees paid to State governmental agencies or first purchasers for collection of the assessments if the payment of such fees by the qualified State soybean board is required by a State statute enacted prior to the date of enactment of the bill. Any credit provided to any qualified state soybean board under section 5(k) may not exceed 2.5 percent of the amount of assessments collected and remitted to the Board under section 5(j).

Section 5, in subsection (l), will require the order to contain provisions to ensure that—

(1) during the period prior to conduct of the referendum provided for in section 6(a), each qualified State soybean board retains annually an amount of money equal to the average amount that the State board collected from assessments during each of the State board's fiscal years 1984 through 1988, excluding the years in which such collections were the highest and lowest, as determined by the Secretary;

(2) effective after the conduct of the referendum provided for in section 6(a), the Board annually provide a credit to each qualified State soybean board of an amount by which the amount equal to one cent times the average number of bushels of soybeans produced in the State during each of the preceding 5 years, excluding the year in which the production is the highest and lowest, exceeds the total amount collected by the qualified State soybean board from assessments on producers under the bill and state law minus the amount of assessments remitted to the Board during such year under section 5(j).

However, the total amount of assessment funds retained by a qualified State soybean board under section 5(l)(1), 5(l)(2) and 5(j)(4) for a year may not exceed the total amount of assessments collected in the State under section 5(j), net of any refunds made under section 5(j)(2), for that year.

Section 5, in subsection (m), will provide that order will allow the Board, with the approval of the Secretary, to invest funds received by the Board under the order, pending their disbursement, only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States. Income from any such investment may be used only for such purposes as the invested funds may be used.

Section 5, in subsection (n), will require the order to prohibit any funds collected by the Board under the order from being used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign government, or the government of any State or United States territory or possession, or any political subdivision thereof. However, this prohibition does not apply to—

(1) the development and recommendation of amendments to the order;

(2) the communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research, consumer information, and industry information under the order; or

(3) any action designed to market soybeans or soybean products directly to a foreign government or political subdivision thereof.

Section 5(o), in paragraph (1), will provide that the order must require that each first purchaser of soybeans and any person processing soybeans of that person's own production maintain and make available for inspection by the Board or the Secretary such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order. The order must exempt small producers processing soybeans of their own production from such recordkeeping and reporting requirements if they are not required to pay assessments under the order.

Section 5(o), in paragraph (2), will require that information maintained under section 5(o)(1) must be made available to the Secretary as is appropriate for the administration or enforcement of the bill, or any order or regulation issued under the bill. In addition, the Secretary must authorize the use under the bill of information regarding first purchasers that is accumulated under a law or regulation other than the bill or regulations under the bill.

Section 5(o), in paragraph (3), will require commercial or financial information obtained under sections 5(o)(1) and 5(o)(2) and that is privileged or confidential to be kept confidential by all officers and employees of the Department, the Board, and agents of the Board. However, information obtained under the authority of the

bill must be made available to any agency or officer of the Federal Government for—

(1) the implementation of the bill;

(2) any investigatory or enforcement action necessary for the implementation of the bill; or

(3) any civil or criminal law enforcement activity if the activity is authorized by law.

Section 5(o), in paragraph (4), will provide that any person who intentionally or knowingly violates the provisions of section 5(o), upon conviction, will be subject to a fine of not more than $1,000, or to imprisonment for not more than one year, or both, and if an agent of the Board or an officer or employee of the Department, must be removed from office.

Section 5, in subsection (p), will require the order to provide terms and conditions, not inconsistent with the provisions of the bill, as necessary to effectuate the provisions of the order, including provisions for the assessment of a penalty for each late payment of assessments under section 5(j).

SECTION 6—REFERENDA

Section 6, in subsection (a), not earlier than 18 months nor later than 36 months following the issuance of an order under section 4, will require the Secretary to conduct a referendum for the purpose of ascertaining whether the order then in effect will be continued. The referendum will be conducted among producers who, during a representative period as determined by the Secretary, have been engaged in the production of soybeans. The order will be continued only if the Secretary determines that the order has been approved by not less than a majority of the producers voting in the referendum. If continuation of the order is not approved by a majority of those voting in the referendum, the Secretary must terminate the collection of assessments under the order within 6 months after the referendum and must terminate the order in an orderly manner as soon as practicable.

Section 6, in subsection (b), after the initial referendum on an order, will require the Secretary to conduct additional referenda, if requested by a representative group of producers. An additional referendum on an order must be conducted if requested by 10 percent or more of the producers who during a representative period have been engaged in the production of soybeans, of which group of requesting producers not in excess of one-fifth are producers in any one State, as determined by the Secretary. Each additional referendum must be conducted among all producers who, during a representative period, as determined by the Secretary, have been engaged in the production of soybeans to determine whether such producers favor the termination of the order. If the Secretary determines that termination of the order is favored by a majority of the producers voting in the referendum, the Secretary must terminate, as appropriate, collection of assessments under the order within 6 months after such determination and must terminate the order, as appropriate, in an orderly manner as soon as practicable after such determination.

In addition, to facilitate the periodic determination as to whether producers favor the conduct of an additional referendum, the Secretary, 5 years after the conduct of a referendum under section 6 and every 5 years thereafter for as long as an order is in effect, must provide soybean producers an opportunity to request an additional referendum. The Secretary must establish a procedure under which producers may request a reconfirmation referendum in person at county extension offices during a period established by the Secretary, or in lieu of making such requests in person, producers may make requests by mail. Mail-in requests must be postmarked no later than the end of the period established for in-person requests. To facilitate such submission of requests by mail, the Secretary may make mail-in request forms available to producers.

The Secretary must publish a notice in the *Federal Register,* and the Board must provide written notification to producers, not later than 60 days prior to the end of the period established for in-person requests, of the producers' opportunity to request the additional referendum. Such notification must explain the producers' rights to, and the procedures for, the conduct of an additional referendum, the purpose of the referendum, and the date and method by which producers can act to request the additional referendum. The Secretary must take such other actions as the Secretary determines necessary to ensure that producers are made aware of the opportunity to request an additional referendum on the order.

As soon as practicable following the submission of requests for a reconsideration referendum, the Secretary must determine whether a sufficient number of producers have requested an additional referendum, and take other steps to conduct an additional referendum. Any additional referendum requested under the procedures provided in section 7(b)(3) must be conducted not later than one year after the Secretary determines that a representative group of producers have requested the conduct of such referendum.

The Committee intends that the Secretary issue regulations or provide terms in the order to allow producers 6 months to request the conduct of a referendum.

Section 6, in subsection (c), will require the Secretary to be reimbursed from assessments collected by the Board for any expenses incurred by the Secretary in connection with the conduct of any activity required under section 6, except for the salaries of Government employees.

In addition, section 6(c) will require each referendum to be conducted for a reasonable period (not to exceed 3 days) established by the Secretary, under a procedure whereby producers intending to vote in the referendum will certify that they were engaged in the production of soybeans during the representative period and, at the same time, will be provided an opportunity to vote in the referendum. Referenda must be conducted at county extension offices and provision must be made for absentee mail ballots to be provided upon request.

SECTION 7—PETITION AND REVIEW

Section 7, in subsection (a), will authorize any person subject to an order issued under the bill to file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or an exemption from the order. The petitioner must be given an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary. After the hearing, the Secretary will make a ruling on the petition.

Section 7, in subsection (b), will vest the district courts of the United States in any district in which a person who is a petitioner under section 7(a) resides or carries on business with jurisdiction to review the ruling on such person's petition, if a complaint for that purpose is filed within twenty days after the date of the entry of a ruling by the Secretary under section 7(a). Service of process in such proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure. If the court determines that the ruling is not in accordance with law, the court will remand the matter to the Secretary with directions either to make such ruling as the court shall determine to be in accordance with law, or to take such further action as, in the opinion of the court, the law requires.

SECTION 8—ENFORCEMENT

Section 8, in subsection (a), will provide that each district court of the United States will have jurisdiction specifically to enforce, and to prevent and restrain a person from violating, an order or regulation issued by the Secretary under the bill. A civil action authorized to be brought under section 8(a) must be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation if the Secretary believes that the administration and enforcement of the bill would be adequately served by providing a suitable written notice or warning to the person who committed the violation or by adminstrative action under section 8(b).

Section 8, in subsection (b), will provide that a person who willfully violates an order or regulation issued by the Secretary under the bill may be assessed by the Secretary a civil penalty of not more than $1,000 for each such violation, and in the case of a willful failure to pay, collect, or remit an assessment as required by the order, an additional penalty equal to the amount of the assessment. Each violation will be a separate offense. In addition to or in lieu of this civil penalty, the Secretary may issue an order requiring the person to cease and desist from violating the order or regulation. No order assessing a penalty or cease and desist order may be issued by the Secretary unless the Secretary gives the person against whom the order is issued notice and opportunity for a hearing on the record with respect to such violation. An order assessing a penalty or cease and desist order issued by the Secretary will be final and conclusive unless the person against whom the order is issued files an appeal from such order with the appropriate district court of the United States not later than 30 days after the date of such order.

In addition, section 8(b) will authorize a person against whom an order is issued to obtain review of the order in the district court of the United States for the district in which the person resides or does business, or in the United States district court for the District of Columbia, by filing a notice of appeal in the court not later than 30 days after the date of the order, and simultaneously sending a copy of the notice by certified mail to the Secretary. The Secretary must file promptly in the court a certified copy of the record on which the Secretary found that the person had committed a violation. A finding of the Secretary will be set aside only if the finding is found to be unsupported by substantial evidence. A person who fals to obey a valid cease and desist order issued by the Secretary, after an opportunity for a hearing, will be subject to a civil penalty assessed by the Secretary of not more than $500 for each offense. Each day during which such failure continues will be considered a separate violation of the order.

If a person fails to pay a valid civil penalty imposed under section 8(b) by the Secretary, the Secretary must refer the matter to the Attorney General for recovery of the amount assessed in the district court of the United States in any district in which the person resides or conducts business. In such action, the validity and appropriateness of the order imposing the civil penalty will not be subject to review.

Section 8, in subsection (c), will provide that the remedies provided in section 8(a) and 8(b) will be in addition to, and not exclusive of, other remedies that may be available.

SECTION 9—INVESTIGATIONS; POWER TO SUBPOENA; AID OF COURTS

Section 9, in subsection (a), will allow the Secretary to make such investigations as the Secretary deems necessary—

(1) for the effective administration of the bill, or

(2) to determine whether any person subject to the provisions of the bill has engaged or is about to engage in any act that constitutes or will constitute a violation of any provision of the bill, or of any order or regulation issued under the bill.

Section 9, in subsection (b), for the purpose of any such investigation, will authorize the Secretary to require the production of any records that are relevant to the inquiry. The production of any such records, may be required from any place in the United States.

Section 9, in subsection (c), in case of contumacy by, or refusal to obey a subpoena to, any person, will authorize the Secretary to invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the production of records. The court may issue an order requiring such person to appear before the Secretary to produce records. Any failure to obey such order of the court may be punished by such court as a contempt thereof. Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

Section 9 will limit the Secretary's subpoena power to the production of records only.

SECTION 10—ADMINISTRATIVE PROVISIONS

Section 10 will provide that nothing in the bill may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State, or authorize the withholding of any information from Congress. However, in order to ensure the proper administration of the bill, any provision of State law automatically requiring a State referendum relating to the continuation or termination of a qualified State soybean board shall, to the extent it automatically requires such as referendum, be suspended for the period beginning on the date an order is issued under section 4 and ending 18 months after the referendum on such order is conducted under section 6(a). The suspension will not apply to any State referendum regarding a State soybean promotion program that is originated by soybean producers. In addition, in order to ensure adequate funding of the operations of qualified State soybean boards under the bill, whenever an order is in effect under the bill, no State law or regulation that limits the rate of assessment that the qualified State soybean board in the State may collect from producers on soybeans produced in such State, or that has the effect of limiting such rate, may be applied to prohibit such State board from collecting, and expending for authorized purposes, assessments from producers of up to the full amount of the credit authorized for producer contributions to qualified State soybean boards under section 5(j)(4).

The Committee strongly supports continuation of the traditional work of existing State promotion programs. Sections 5(j)(4) and 10 are designed to ensure that the national soybean promotion program established under the bill does not adversely affect, or interfere with, the operations of State soybean promotion programs. Existing State programs, some of which have been in operation for decades, have done important work in their own right in assisting soybean producers in marketing their product and otherwise promoting the interests of producers and their product.

SECTION 11—REGULATIONS

Section 11 will authorize the Secretary to make such regulations as may be necessary to carry out the provisions of the bill.

SECTION 12—AUTHORIZATION

Section 12 will authorize to be appropriated annually such funds as are necessary to carry out the provisions of the bill. The funds so appropriated will not be available for payment of the expenses or expenditures of the Board or the Committee in administering any provision of any order issued under the bill.

COMMITTEE CONSIDERATION

I

On May 3, 1989, Mr. Glickman, for himself and others, introduced H.R. 2209, a bill to enable producers of soybeans to develop, finance, and carry out a nationally coordinated program for soy-

bean promotion, research, and consumer information, and for other purposes (the Soybean Promotion, Research, and Consumer Information Act).

II

On Thursday, June 8, 1989, the Subcommittee on Wheat, Soybeans, and Feed Grains held a public hearing in Washington, DC to review H.R. 2209, the Soybean Promotion, Research, and Consumer Information Act.

III

On Tuesday, June 13, 1989, the Subcommittee on Wheat, Soybeans, and Feed Grains met, pursuant to notice, to consider H.R. 2209, the Soybean Promotion, Research, and Consumer Information Act.

Chairman Glickman called the meeting to order and recognized Mr. Roberts who clarified that voluntary State soybean promotion programs continue and are not affected if producers voting in the referendum do not approve the Federal soybean promotion program.

Chairman Glickman offered an en bloc amendment regarding (1) mandatory recall referenda and periodic polls of producers on whether to hold a reconsideration referendum; (2) refund of assessments prior to the initial referendum; (3) the clarification of the definitions of "consumer information", "industry information", "promotion", "research", and "market development activities" to ensure that these terms do not include information or programs designed to influence any action or policy of the United States government; (4) the prohibition of the use of program funds for the purpose of influencing legislation in the United States; (5) annual audits of the books and records of the United Soybean Board; (6) assessments on soybeans pledged as collateral for a loan issued under a price support loan program administered by the Commodity Credit Corporation; (7) the time period that the Secretary must approve or disapprove the budget; and (8) the definition of "market access activities".

Mr. Jontz was recognized and offered an amendment to the Glickman en bloc amendment that would allow refunds of assessments both before and after the referendum. Chairman Glickman stated that he opposed the Jontz amendment and after further discussion the Jontz amendment was not agreed to by voice vote.

After further discussion, the Glickman en bloc amendment was agreed to by voice vote.

The Subcommittee then agreed, by voice vote in the presence of a quorum, to report H.R. 2209, as amended, to the full Committee with the recommendation that it do pass.

On Thursday, October 26, 1989, the Committee on Agriculture met, pursuant to notice, to consider H.R. 2209. Chairman de la Garza called the meeting to order and recognized Mr. Glickman who requested unanimous consent that the Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition be discharged from further consideration of the bill. The motion was agreed to without objection.

Mr. Glickman offered an amendment in the nature of a substitute and explained that the substitute to H.R. 2209 addressed and comported with the vast majority of the concerns that the Department of Justice, Department of Agriculture, the U.S. Trade Representative and several general farm organizations raised about the bill as introduced.

Mr. Glickman stated that, in developing the substitute, his overriding concern was to avoid enacting legislation which would create a program that would directly benefit one certain lobbying group which may only represent a certain segment of farmers. In addition, the substitute was designed to create an unbiased opportunity for a diversity of views and establish a wide range of checks and balances to prevent close relationships developing between the United Soybean Board and certain lobbying groups.

Mr. Glickman explained the provisions in the substitute which would ensure the autonomy of the United Soybean Board which include: (1) the appointment by the Secretary of representatives of national farm organizations to ensure a diversity of views on the board; (2) the ability to contract with entities other than one specific organization for administrative or programmatic services; (3) the authority to establish its own staff, while limiting the amount of funds which may be used for such staff for administrative purposes; (4) the ability to contract for programmatic purposes with any farmer-governed organizations that represent soybean growers for carrying out research efforts, market development, or consumer information programs; and (5) the elimination of the coordinating committee whose membership would have been dominated by one specific organization and would have been filled with members not selected through the same open nominating process required elsewhere in the bill.

Mr. Glickman described several provisions in the substitute designed to ensure accountability in the operation of the program which include: (1) the requirement that the United Soybean Board keep records and accounts of all its financial transactions; (2) the requirement that the Secretary contract for an independent audit of the United Soybean Board's financial transactions yearly and make these audits available to the public; and (3) Secretarial approval before the United Soybean Board could conduct any activities and expend any funds.

Mr. Glickman asked unanimous consent that the substitute amendment be considered as original text for purposes of amendment. The motion was agreed to without objection.

The Committee discussed the need for the establishment of guidelines that could be applied to all promotion programs and the extent to which the United Soybean Board may engage in foreign market development activities.

Mr. Huckaby was recognized and offered an amendment to allow the United Soybean Board to establish its own personnel staff and to allow (not require) the United Soybean Board to enter into contracts or agreements to implement and carry out the activities authorized by the bill. The Huckaby amendment was agreed to by voice vote.

Chairman de la Garza offered an amendment to extend from 120 to 180 days the period by which the order must be issued and

become effective following publication of the proposed order. The de la Garza amendment was agreed to without objection.

Mr. Glickman was recognized and moved that H.R. 2209, as amended, be adopted and ordered favorably reported to the House. The motion was agreed to by voice vote in the presence of a quorum.

Administration Position

At the time of the filing of this report, the Committee had not received a report from the U.S. Department of Agriculture concerning H.R. 2209, as amended, to enable producers of soybeans to develop, finance, and carry out a nationally coordinated program for soybean promotion, research, and consumer information, and for other purposes.

Budget Act Compliance (Section 308 and Section 403)

The provisions of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, or new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, November 9, 1989.

Hon. E de la Garza,
Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 2209, the Soybean Promotion, Research, and Consumer Information Act, as ordered reported by the House Committee on Agriculture on October 26, 1989. CBO estimates that enactment of this bill would result in costs to the federal government of less than $50,000 in fiscal year 1992.

H.R. 2209 would establish a soybean board to oversee promotional and research efforts to increase marketings of soybeans and soybean products. It would be financed by assessing soybean producers one-half of 1 percent of the net soybean market price. The role of the Secretary of Agriculture would be limited to initiating the order setting up the board, establishing membership, reviewing budgets, investigating complaints of violations, and conducting a minimum of one producer referendum. The board would pay all its expenses and reimburse the Secretary for any administrative costs incurred after the initial order has been issued (including the costs of the referendum, but excluding the cost of salaries of government employees handling the referendum). The referendum is to be held from 18 to 36 months after the issuance of the order establishing the United Soybean Board to administer the promotion activities.

H.R. 2209 authorizes the appropriation of necessary funds to carry out these provisions. The federal government's unreimbursed costs would be limited to salary costs for the referendum, which are likely to be incurrred in fiscal year 1992. We estimate that those salary costs would be less than $50,000. Other costs would be reimbursed in the same fiscal year in which they occur.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Eileen Manfredi, who can be reached at 226-2860.

Sincerely,

ROBERT F. HALE
(For Robert D. Reischauer, Director).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 2209, as amended, will have no inflationary impact on the national economy.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Operations under clause 2(b)(2) of rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by H.R. 2209, as amended.

No specific oversight activities other than the hearings detailed in this report were conducted by the Committee within the definition of clause 2(b)(1) of rule X of the Rules of the House of Representatives.

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